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ABSTRACT

Developed for faculty and staff of the California Community Colleges (CCC), this report serves as a comprehensive, quick reference to revisions of the Affirmative Action Staff Diversity Regulations of Title V of the California Education Code. The report provides separate explanations of each of the 29 sections of the legislation, presents detailed answers to 17 commonly asked questions, and contains a copy of the actual legislation. The opening sections list issues addressed in the regulations in addition to hiring procedures and briefly review 13 selected sections of the Title V regulations. The next section reviews the 29 sections of the legislation, which are entitled Affirmative Action; Scope and Intent; Definitions; Policy Statement; District Plan; District Evaluation and Report to Chancellor; Advisory Committee; Responsibility, Delegation of Authority, Complaints; Recruitment; Job Announcements and Required Qualifications; Applicant Pool; Screening or Selection Procedures; Persons with Disabilities; Complaints; Applicability to Districts Operating on the Merit System; Fund Allocation; Success; Point Factors; Failure to Report; Required Report; Visitor Parking for Persons with Disabilities; Sexual Harassment and Sexual Discrimination; Responsible District Officer; Complaint; District Investigation; Administrative Determination; Final District Decision, Appeals; Forward to Chancellor; and Extensions, Fail to Comply. Questions pertinent to particular section are presented and answered. The final section of the report provides the actual legislation. (PAA)

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ED 364 279

April 1993

AFFIRMATIVE ACTION REGULATIONS:

GUIDELINES WITH QUESTIONS AND ANSWERS

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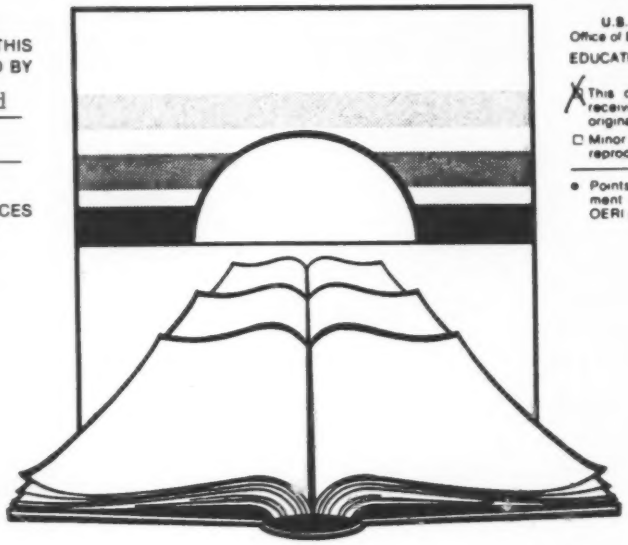

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AFFIRMATIVE ACTION REGULATIONS

GUIDELINES WITH QUESTIONS AND ANSWERS

Continuing work of the Academic Senate for California Community Colleges Affirmative Action / Cultural Diversity Committee 1990-1991, the 1992-1993 committee developed these guidelines . With permission from the Human Resources Division of the Chancellor's office, major portions of the guideline language included in the publication: A Guide to Regulation Changes for California Community College Trustee were used in this document and repeated verbatim.

The committee sought to include the guidelines, anticipated questions with answers, and specific suggestions for faculty at the local level.

This document is designed to be a comprehensive, yet quick reference to the revisions of the Affirmative Action Staff Diversity Regulations. While the Chancellor's Office has staff resources to address various areas of specialty in the Human Resources Division, we recommend the faculty take full advantage of the Academic Senate in addressing these issues from a faculty perspective.

This document was adopted by the 1993 Spring Session.

ISSUES IN ADDITION TO HIRING PROCEDURES ADDRESSED IN THE REGULATIONS

1. Districts must designate single officer with authority and responsibility to handle complaints

2. Business Necessity - circumstances justifying exception to open recruitment because compliance would result in significant threat to human life and safety or substantial additional cost. District must, if declaring Business Necessity:
   a. Notify Faculty and Staff Diversity committee
   b. Notify Chancellors Office 10 days prior to offering
   c. Allow in-house competition

3. Persons with Disabilities - Goals will be established for future; tracking for adverse impact on applicant pools begins now.

4. Affirmative action complaint investigations can be requested by Chancellor's Office

5. Funding Allocation Formula

6. Visitor parking for persons with disabilities

7. Complaint process expanded from 90 to 135 days with added steps for Board of Trustees Resolution.

8. Sexual Harassment / Sexual Discrimination complaints may be filed in accordance with section

TITLE V REGULATIONS
SELECTED TOPICS AT A GLANCE

51010 Affirmative action program required to receive state apportionment

53001 Definitions, including "adverse impact," "proportionate representation," and "business necessity."

53002 Governing Board required to adopt a policy statement setting forth the district's commitment to an affirmative action employment program

53003 Governing Board required to submit an Affirmative Action Plan for its employment program

53020 Board Authority and Responsibility noted, with emphasis on the Board's ultimate responsibility for making measurable progress towards the goals provided in its plan.

53021 Requires open recruitment for all positions except when no new position is established or other specified conditions.

53022 Requires faculty and administrative position announcements to include a requirement for a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.

53023 Requirement for a diverse applicant pool; if this diverse pool is not achieved, the Chief Executive Officer or designee must take effective steps to address the problem before the selection process continues.

53024 Requirement to monitor selection process and suspend action if adverse action is determined. Responsibility of the Board for final hiring responsibility, including furthering achievement of the goals of the district's plan. Consistent failure to hire qualified candidates from underrepresented groups constitutes a violation of minimum standards.

53025 Given availability data from the state Chancellor's Office, overall goals or aggregate goals for persons with disabilities will be required.

53026 Under this section, any person may file a complaint. A complaint process must be established by each district. A copy of the complaint must be forwarded to the Chancellor's Office, which may require districts to provide a written investigative report within 90 days.

53027 Exemption for districts using merit system

53030 Funding allocation formula and required
-34 assessment reporting information due annually, by September 30.

The Section of the Affirmative Action Regulations of Title 5 is indicated with a narrative explanation of its intent. The exact title of the sections are used for easy cross reference to the regulation. In the areas where the committee anticipated misunderstanding, questions with answers are given. Not all sections contain questions and answers.

Section 51010 Affirmative Action:

This section sets forth minimum standards for faculty and staff diversity. Subsections (e) and (f) have been added to this section to create two new minimum standards in this area. These minimum standards must be met as a condition for receiving any state aid. Subsection (e) makes compliance with the procedural rules for screening and selection (as set forth in Section 53024) a minimum standard. Subsection (f) requires that hiring decisions be made in a manner which, when viewed over time, forwards the goals set forth in the Affirmative Action / Faculty and Staff Diversity Plan. The distinction between these two provisions is that subsection (e) relates to process while subsection (f) addresses outcomes. It should be emphasized, however, that subsection (f) does not require an affirmative action hire in any given case. Instead, it requires that the overall pattern of hiring decisions should reflect progress toward the goals established in the district's Affirmative Action Faculty and Staff Diversity Plan.

1. QUESTION: Does your district have an Affirmative Action / Faculty and Staff Diversity Plan and where is it kept?

   ANSWER: Each district is required by Title 5 regulations (Section 53003) to have an Affirmative Action / Staff Diversity Plan. Local districts may vary in their housing of the plan. If faculty are attempting to locate it in their local district they may consider looking in the offices of the:
   a. personnel director
   b. affirmative action officer
   c. staff diversity specialist / director coordinator
   d. academic senate leadership
   e. local affirmative action committee chair or members

Section 53000 Scope and Intent

This section distinguishes between the nondiscrimination requirements imposed by other state and federal laws and the obligation to promote faculty and staff diversity, which is embodied in these regulations.

Nondiscrimination laws aim to ensure that employment decisions and practices are not biased by race, ethnicity, gender, age, religion, disability, medical condition, marital status or other similar factors. Such laws include, but are not limited to the:

a. Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).
b. Civil Rights Act of 1964 as amended by the Civil Rights act of 1991 (42 U.S.C. 2000 et seq.)
c. Title IX of the Education Amendments of 1972 (20 U.S.C. 1618 et seq.)
d. Rehabilitation Act of 1973 (29 U.S.C. 706 et seq.)
e. Age Discrimination and Employment Act of 1967 (29 U.S.C. 621 et seq.)
f. Americans with Disabilities Act of 1990 (42 U.S.C. 12100 et. seq.)
g. California Fair Employment and Housing Act (Government Code Sections 12900 et seq.)
h. Unruh Civil Rights Act (Civil Code Sections 51 et seq.)
i. Sex Equity in Education Act (Education Code Sections 200 et seq.)
j. Assembly Bill 803 of 1977 (Government Code Sections 11135 et seq.)

However, Congress, the courts, and the State Legislature have also recognized that certain groups need additional protection because they have been historically underrepresented in the work force. Education Code Sections 87100 et seq., mandate that community colleges must go beyond complying with nondiscrimination laws and take active steps to promote faculty and staff diversity.

While the regulations of this chapter, which implement this affirmative action mandate, were drafted with the nondiscrimination requirements in mind, compliance with this chapter does not necessarily guarantee that a district is in full compliance with every aspect of each and every nondiscrimination statute or regulation.

With respect to contractual rights, the changes made to the regulations in 1992 are not intended to be applied retroactively. Consequently, collective bargaining agreements negotiated consistent with the prior regulations will not be impaired. However, such agreements should be revised and updated, if necessary, when they are subsequently re-negotiated. Schools without contractual agreements were expected to comply with the regulation by April 24, 1992.

Section 53001 Definitions

This section sets forth various definitions used throughout the regulations. They include but are not limited to:

a. business necessity

b. ethnic minorities
c. historically underrepresented group
d. proportionate representation
e. adverse or disparate impact

Subsection (c) defines "business necessity" which is used to determine whether a position is exempt from the open recruitment requirement (Sec. 53021(b)(3)) and whether the selection process can go forward despite adverse impact(Section 53023(c)). The use of business necessity in adverse impact cases has been the subject of considerable litigation. Districts may wish to look at this body of case law when interpreting Section 53023(c).

Subsection (e) defines "ethnic minorities" to include "American Indians or Alaskan Natives, Asians or Pacific Islanders, Blacks, and Hispanics." Each of the acceptable groups' terms is more specifically defined below.

1. American Indian or Alaskan Native - all persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.

2. Asian or Pacific Islander - all persons having origins in any of the original peoples of the Far East, Southeast Asia or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, Samoa, and the Indian subcontinent. For purposes of the report to the Chancellor required by Section 53004, Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group, as well as in separate subcategories. This breakdown is required by Government Code Section 8310.5 However, these subcategories should not be used for goal setting. Instead, the Asian/Pacific Islander category should be treated as a single group.

3. Black (not of Hispanic origin) - all persons having origins in any of the black racial groups of Africa.

4. Hispanic - all persons of Chicano, Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture origin regardless of race

For reporting purposes, it is also necessary to collect data on the number of non-minority or "white persons" employed by the district. This group includes all persons having origins in any of the original peoples of Europe, North Africa, the Middle East, and not of Hispanic origin.

Although there may be local desire to use alternative terms (Latino for Hispanic, African-American for Black, etc.) the practice should be avoided and is not acceptable for reporting purposes. Many common alternative terms represent included groups that are narrower than the defined group.

Subsection (h) defines the term "historically underrepresented groups". A group could be considered historically underrepresented if the percentage of persons from that group in the work force is now, and has historically been, significantly lower than the percentage that members of that group represent in the pool of persons who are available and qualified to perform the work in question.

Subsection (j) defines the term "proportionate representation". This is a new definition which has been added. "Proportionate representation" means the percentage of persons from a historically underrepresented group in the district's qualified workforce is at least equal to the percentage in the labor pool determined qualified to perform the work in question. The Chancellor's Office has a system for providing availability data.

Subsection (m) gives a general definition of the term "adverse or disparate impact". Essentially, adverse impact exist if the application of one or more of the recognized statistical measurement procedures reveals that the selection rate for a particular group is so significantly below that for other groups that the discrepancy is unlikely to be the result of chance. (See Sections 53023 and 53024 accompanying guidelines).

2. QUESTION: Is a district free to declare a group as "historically underrepresented"?

   ANSWER: The Board of Governors has determined that, on a statewide basis, ethnic minorities, women, and persons with disabilities are historically underrepresented groups. However, under limited circumstances, districts have authority to designate other groups as being historically underrepresented for that district.

   Districts considering this option should be aware that there are strict constitutional limitations which must be observed before an employer may give affirmative action protection to any group and that the district would be entirely responsible for ensuring that those requirements have been satisfied for any group beyond those recognized by the Board of Governors. (See City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).)

3. QUESTION: How is it determined in which "group" an individual is classified?

ANSWER: An individual is classified in which ever group he or she so designates. An individual may choose only one group even if he or she is of mixed ancestry.

Section 53002 Policy Statement

This section requires the governing board of each community college district to adopt a policy statement setting forth the district's commitment to an affirmative action employment program.

Section 53003 District Plan

This section spells out the requirements for the district's Affirmative Action / Faculty and Staff Diversity Plan. For the most part, this is a compilation of requirements which were previously scattered throughout the entire chapter, but subsection (b) makes two important clarifications.

1. It places in the regulation the long-standing administrative requirement that goals and timetables be set by college and for the district as a whole.
2. It explains that goals are no longer necessary for a particular group in a given job category when proportionate representation has been achieved for that group in the job category in question.

However, other obligations imposed by this chapter continue to apply. In particular, the district is still required to monitor for adverse impact on that group so that appropriate steps, including establishing new goals, can be taken if and when underrepresentation of a particular group does occur.

4. QUESTION: Should the faculty be concerned about the Affirmative Action / Faculty and Staff Diversity Plan?

ANSWER: Yes, districts are required to "consult collegially" with the academic senate regarding academic and professional matters. The development and implementation of the Affirmative Action / Faculty and Staff Diversity Plan is a professional matter. Because of this requirement to consult collegiality, faculty have the opportunity and responsibility to significantly shape and support the faculty and staff diversity efforts of the district. The

achievement of faculty and staff diversity should be approached as an institutional effort compelling all segments of the institution to address the issue with a strong commitment.

Section 53004 District Evaluation and Report to Chancellor

This section requires that each community college district shall annually survey its employees to evaluate its progress in reaching the goals set forth in its Affirmative Action / Faculty and Staff Diversity Plan. Each district is required to report annually the results of this survey to the Chancellor. This latter requirement is met through the submission of the annual Staff Data Report in the fall of each year.

5. QUESTION: Which employee categories are counted in the district evaluation and report to the chancellor?

   ANSWER: The regulations indicate the seven job categories in which each employee may be identified. Employees which belong to one of the seven job categories and are full time contract (certificated) or classified staff working 20 hours or more per week. The seven categories are:
   a. executive / administrative / managerial
   b. faculty and other instructional staff
   c. professional nonfaculty
   d. secretarial / clerical
   e. technical and paraprofessional
   f. skilled crafts
   g. service and maintenance

Section 53005 Advisory Committee

This section requires that each community college district (multi-college and single-college) establish a Faculty and Staff Diversity Advisory Committee. It also states that the established committee shall include members of all historically underrepresented groups whenever possible.

The use of the phrase "whenever possible" is designed to afford the district some flexibility when it simply is not possible to find members of all historically underrepresented groups to serve on the advisory committee. However, a substantial good faith effort to comply with this regulation will be expected. A district which has not met this requirement should be prepared to document that efforts were made to recruit advisory committee members from other institutions and from appropriate community groups.

We recommend that local academic senates take an active role in confirming or assigning diverse faculty to this committee. This is not intended to diminish the responsibility of all faculty to address and support the concepts of faculty and staff diversity by participating on the advisory committee. We recommend that all faculty assigned to the advisory committee to represent the local academic senate report back regularly to the local academic senate meetings.

Section 53020 Responsibility: Delegation of Authority: Complaints

This section states that the governing board of the district is ultimately responsible for ensuring that progress is made toward achieving the goals in the district's Affirmative Action / Faculty and Staff Diversity Plan. It requires that an affirmative action officer is designated to carry out this responsibility. It also requires that the plan describe the structure for the delegation of authority, if any, which the governing board creates to carry out this responsibility .

The governing board can only take actions, or authorize its employees to take actions, to promote affirmative action which are consistent with other provisions of state and federal law. For example, a district may not, in the name of promoting diversity, hire a faculty member who failed to meet state minimum qualifications for faculty.

6. QUESTION: If a faculty member or potential faculty member has a complaint that affirmative action regulations have been violated, where does he or she go with the complaint?

   ANSWER: It is required that the Affirmative Action / Staff Diversity Plan designate a single officer, who may be the affirmative action officer, to be given authority and responsibility for receiving the complaints and making sure the complaints are promptly and impartially investigated.

Section 53021 Recruitment

This section requires each district to undertake a program of affirmative action recruitment to attract members of historically underrepresented groups. It also generally prohibits filling any position through "in house" or "promotional only" hiring. If "promotional only" hiring is justified using "business necessity" this section requires notice to the Chancellor and the district's Faculty and Staff Diversity Advisory Committee at least ten working days prior to filling the position. Where "in house" or "promotional only"

hiring is permissible, subsection (d) requires that all qualified district employees must be afforded an opportunity to apply.

In order to comply with this section, a district must first determine whether the position to be filled is a "new opening." The concept of a "new opening" is somewhat difficulty to define. The easiest approach is to list those situations in which a "new opening" is not created. These include:

1. undertaking a reorganization or series of one or more transfers or reassignments that does not result in a net increase in the number of employees. This includes situations where an employee dies, retires, resigns, or is terminated and the district chooses to redistribute the workload rather than hiring a new person to perform the work;
2. upgrading, reclassifying, or renaming a position which is currently occupied by an incumbent without significantly altering the duties being performed by the individual;
3. electing one faculty member in a division or department to serve as chairperson for a prescribed limited term;
4. making a temporary appointment using procedures authorized by any of the following Education Code Sections:
   a. 87422 (Temporary Academic Exchange Employees)
   b. 87480 and 88109 (Emergency Hire in Case of Work Stoppage);
   c. 87482.5(b) (Day-to-Day Substitute Employees);
   d. 88003 (Substitute, Short-term, or Temporary Employees Who Are Not Part of the Classified Service); and
   e. 88106 (Provisional Employees)
5. filling the position with an employee who has resigned, been laid-off, or has been terminated and has reappointment or reemployment rights pursuant to Education Code Sections 87744 to 87746 or 88127 et seq.;
6. assigning overload (including teaching during summer and intersessions) to existing full-time employees; and
7. assigning a part-time faculty member to teach a class in a discipline in which he or she has previously taught without a substantial break in service. It is the recommendation of the Chancellors Office that the break in service should not be in excess of one year.

(Note: It is however, the opinion of the Chancellor's Office that a "new opening" is created when a new teaching assignment is to be given to a part-time employee or when an existing part-time teaching assignment is to be reassigned because the person who previously performed that work takes a leave of absence, relinquishes the assignment, retires, or otherwise leaves district employment. (However, it must be emphasized that this subject was not fully discussed during the development of the regulations and it is

anticipated that the effect of these regulations on part-time faculty will be further clarified as time goes on.)

It should be recalled that the guidelines for Section 53000 explain that existing collective bargaining agreements will not be affected by the recent changes to the regulations. Thus, a district could continue to use a partial hiring preference for part-time faculty which was negotiated consistent with the earlier version of Section 53021. (See the discussion of seniority in the guidelines for Section 53024)

Of course, even if one of the above exemptions applies, the district always has the option to open up the position and conduct full recruitment. The exemptions are intended to identify situations in which a district may, but need not, fill a position on an in-house basis.

While this is not an exhaustive list, if the position does not fit into one of these categories, then it probably is a "new opening." Where a "new opening" is created, the regulation requires full and open recruitment, with a focus on historically underrepresented groups.

Finally, it should be noted that the requirements of this regulation can be satisfied by filling positions from a time-limited list or pool of persons qualified to perform a particular job, where the list was previously established through full and open recruitment involving appropriate outreach to historically underrepresented groups.

7. **QUESTION:** When can "in house" or "promotional only" hiring occur?

ANSWER: "In house" or "promotional only" hiring is permitted only if one of the exceptions listed in subsection (b) is applicable. These are:

1. the pool of eligible district employees has achieved proportionate representation and the district has an upward mobility program which is included in the Affirmative Action / Faculty and Staff Diversity Plan approved by the Chancellor;
2. the position is being filled on an interim basis (not to exceed one year) to allow for full and open recruitment; (only intended to dispense with the necessity for open recruitment when an interim appointment is made pending a full search. This provision does not in any way, broaden the circumstances under which temporary hiring is permissible. In particular, hiring of temporary faculty is limited to those situations authorized in Education Code Sections 87478 to 87482.5.); or

3. promotional only hiring is justified by "business necessity" as defined in Section 53001(c). (required to notify Chancellor and district Faculty and Staff Diversity Advisory Committee at least ten working days prior to filling the position.)

Section 53022 Job Announcements and Required Qualifications

This section requires that job announcements clearly identify the knowledge, skills, and abilities necessary for job performance. It also requires that the job specifications set forth in the announcement, including any "desired" or "required" qualifications beyond state minimum qualifications, be reviewed before the position is announced, to ensure conformity with the requirement of the faculty and staff diversity regulations and state and federal nondiscrimination laws.

For the purpose of these regulations, going "beyond state minimum qualification" means that additional education or experience is required, or, where the minimum qualification provided for alternate qualification patterns, one or more of these patterns is not accepted by the district. For example, Section 53410(c) provides that faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available can qualify based on the possession of a bachelor's degree from an accredited institution, in a discipline reasonably related to the faculty member's assignment, plus two years of professional experience plus certification to practice or licensure or its equivalent, if available. A district could choose to eliminate the bachelor's degree option, but doing so would involve going beyond State minimum qualification and would be subject to the limitations discussed below.

While AB1725 clearly states that districts are expected and encouraged to adopt local qualifications which go beyond the minimum qualifications established by the Board of Governors, this does not give districts the right to establish job requirements which violate state and federal nondiscrimination laws.

The regulations do not attempt to restate the detailed requirements of these nondiscrimination laws; instead it simply directs the district to review all job announcements with these requirements in mind. The purpose of this review is to ensure that announcements do not include requirements which are discriminatory or are highly likely to have an adverse impact on a particular group. Of course, unless a validation study is done, it will often be impossible to determine with certainty whether a particular job specification has an adverse impact until applications have been received and reviewed. Advance validation of requirements beyond state minimum qualifications is

the safest approach, but it is not required because other regulations (Sections 53023 and 53024) require that the entire selection process be monitored for adverse impact and that appropriate steps be taken if adverse impact does occur. Therefore, a specification need not be removed from the job announcement or altered as long as there is a reasonable prospect that a diverse pool will result.

We recommend the local academic senate take an active role in the establishment of job requirements beyond the State minimum qualifications. Individual governance structures may shape the way in which the district's governing board consults collegially with the senate on this issue. We recommend that the academic senate rely on faculty within the discipline being addressed to significantly influence the Senate's perspective.

This section also requires that faculty and administrative position job requirements include "a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students." We recommend that the academic senate review all new faculty positions to ensure that these requirements are reflected.

8. QUESTION: Do the regulations allow faculty to set the qualifications for the job beyond the state minimum qualifications?

   ANSWER: Yes, however, districts are not given the right to violate state and federal nondiscrimination laws.

<u>Section 53023 Applicant Pool</u>

Subsection (a) provides for the collection of sex, ethnicity, and disability data and directs the use of such applicant data for research, validation, monitoring, and evaluating the effectiveness of a district's Affirmative Action / Faculty and Staff Diversity Plan. It further allows districts to use the data for other purposes authorized by these regulations or other applicable state or federal statutes or regulations. Thus, such information can be used, consistent with Section 53023(b)(2), to identify persons from historically underrepresented groups who may warrant further consideration even though they were initially screened out because the lacked "desired" or "preferred" qualifications.

This section requires that the applicant pool be analyzed to determine whether any group has been adversely impacted. For the purposes of this section, the "applicant pool" means the group of persons who applied for the position and who meet state minimum qualifications and other locally established "required" qualifications. If there is adverse impact, subsection (b)

requires that the chief executive officer or his/her designee take steps to address the problem before the selection process continues.

9. QUESTION: Who, in the district, will have access to the applicant pool data regarding gender and ethnic breakdown?

   ANSWER: The director of personnel, the Affirmative Action Officer, and the chief executive officer. Also, if a selection committee includes a nonvoting representative from the Affirmative Action Office, that person can have access to information about the gender, ethnicity or disability status of individual candidates. Only aggregate data about the composition of the applicant pool can be shared with the entire committee. (See also Section 53024 and accompanying guidelines)

10. QUESTION: How does a district determine whether historically underrepresented groups have been adversely impacted?"

    ANSWER: There are a number of methods for measuring adverse impact which have been approved by the courts or by the Equal Employment Opportunity Commission in the "Uniform Guidelines on Employee Selection Procedures". The regulation allows districts to employ any of these recognized procedures. For example, the simplest method is the "four-fifths rule" which states that disparate impact occurs when the selection rate for any group is less than 80 percent of the selection rate for the group with the highest selection rate.

    The "80% rule" was intended to assess adverse impact over a cumulative number of hires with large numbers of total applicants. For single hires, other statistical tests may be more appropriate.

    It is important to keep in mind that a finding of disparate impact does not necessarily prove that a particular selection procedure or criterion is discriminatory, but it does strongly suggest that this might be the case. Consequently, when disparate impact does occur, federal law requires that the district either eliminate the adverse impact or undertake a study to establish that the criterion in question is job-related and consistent with business necessity.

11 **QUESTION:** What if one or more historically underrepresented groups are not represented among the applicants selected for an interview?

ANSWER: This question refers back to section 53001(m), definition of adverse impact, 53023(b) applicant pool, and 53003(b) goals and timetables.

There must be proportionate representation in the application pool at the start of the selection process. If one group is not represented in the interview stage, the goals and timetables of the district plan should be referenced.

12 **QUESTION:** Does it matter if there is adverse impact on a group other than those who are historically underrepresented?

ANSWER The target population of affirmative action regulations are the ethnic minorities identified in section 53001 and persons with disabilities. However, the Civil Rights Act of 1991 prohibits any "employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin. (See question two.)

13. **QUESTION:** What happens in the event the district determines that adverse impact has occurred?

ANSWER: If there is adverse impact, subsection (b) requires that the chief executive officer or his/her designee takes steps to address the problem before the selection process continues. Such steps may include, but are not limited to:

1. extending the deadline and undertaking additional recruitment focused on historically underrepresented groups;
2. reconsidering applicants from historically underrepresented groups who were screened out because they failed to meet locally established "desirable" or "preferred" qualifications beyond state minimum qualifications through appropriate training or experience within a reasonable length of time. (Note: This provision relates ONLY to "desired" or "preferred" qualifications beyond State minimum qualifications. All candidates must meet State minimum qualifications and any locally established "required" qualifications. Modifications to "required" qualifications would necessitate re-opening the position in order to offer equal opportunity to those

applicants who may have failed to apply because of the stated qualifications); and

3. removing or modifying locally established qualifications beyond state minimum qualifications and extending the application deadline.

14. QUESTION: If the efforts are unsuccessful and there remains adverse impact on at least one historically underrepresented groups, can the hiring process continue?

ANSWER: It may not always be possible to eliminate adverse impact in the applicant pool. In such cases, it may still be possible to proceed with the selection process if all of the conditions set forth in subsection (c) are met. These conditions are:

1. the job announcement does not require qualifications beyond the statewide minimum qualifications;
2. locally established qualifications beyond state minimum qualifications are shown to be job related and consistent with business necessity through a process meeting the requirements of federal law; or
3. the particular requirements beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job related and consistent with business necessity throughout the community college system.

Section 53024 Screening or Selection Procedures

This section sets forth various requirements and authorizations which apply generally throughout the selection process. They include but are not limited to:

a. selection criteria must be job related
b. selection process must be monitored of adverse impact
c. reopening a position when necessary regarding adverse impact
d. include members of historically underrepresented groups on selection committees

15. QUESTION: If a district has not been successful in fulfilling its faculty and staff diversity goals, can particular positions be set aside to be filled by members of historically underrepresented groups?

ANSWER No, section (c) states that a district may not designate or set aside particular positions to be filled by members of any group defined in terms of race, ethnicity, gender, age, disability or any other characteristic which would result in discriminatory treatment prohibited by state or federal law.

16. **QUESTION:** Can preference be given to a candidate because he/she is a member of a historically underrepresented group?

ANSWER: The regulation notes that, when a particular candidate who meets the minimum qualifications for the job is also a member of an historically underrepresented group, this membership may be taken into account as one factor in the final selection process.

17. **QUESTION:** Do desirable qualifications have to be job related?

ANSWER: The regulations require that any criterion used for screening or selection must be job-related. Even if there is no adverse impact and even if the qualification in question is "desired" rather than "required", it would still have to be job related.

Section 50325 Persons with Disabilities

This new section requires that each district collect data on the number of persons with disabilities in the district work force and monitor for adverse impact on this group. When the chancellor provides the necessary availability data, districts will be required to set goals and timetables for persons with disabilities. Finally, this section indicates that faculty and staff diversity funds can be used to make reasonable accommodations required under other provisions of state and federal law.

Section 53026 Complaints

This section requires each district to establish a procedure for responding to complaints alleging violation of the Faculty and Staff Diversity Regulations. It is anticipated that most such complaints will be resolved at the district level and, for this reason, the regulation does not provide complainants with the right of appeal to the Chancellor. However, districts are required to forward copies of all complaints to the Chancellor who may request that the district provide an investigative report. Such reports will be requested only when the complaint involves a minimum standards violation (see Section 51010

and accompanying guidelines) or when the complaint also involves allegations of discrimination prohibited pursuant to Government Code Sections 11135 et. seq., and the implementing regulations adopted by the Board of Governors.

We recommend that the local Academic Senate participate effectively in the establishment of the complaint procedures as determined by individual governance structures. This can be done through either participation on the Affirmative Action / Faculty and Staff Diversity Advisory Committee or through other designated structures specific to the district.

53027 Applicability to Districts Operating on the Merit System

This section states the intent not to conflict with other parts of the Education Code which apply to districts operating on a merit system for classified employees..

53030 Fund Allocation

This section requires the Chancellor to recommend to the Board of Governors a funding allocation formula for the distribution of the Faculty and Staff Diversity Fund. It identifies certain parameters for the funding including the five categories in which the allocation to districts may be. They include:

1. ADA, FTES to ADA, or FTES for all districts
2. an equal dollar amount to all districts
3. an amount related to success in employing ethnic minorities in professional positions (EEO6 categories 1 through 3)
4. an amount related to success in employing ethnic minorities in non-professional categories (EEO6 categories 4 through 7)
5. an amount related to past success in employing ethnic minorities, women, and persons with disabilities (evidenced by existing staff)

These categories and subcategories were derived from the Legislature's charge in Education Code Section 87107. The specific division of funds among the categories and subcategories is established each year, allowing the Board of Governors to move the allocation of funds to accommodate the changing goals and priorities of the system and Section 87107.

Section 53031 Success

This chapter defines "success" as a hiring rate of 30% for ethnic minorities in each of the professional occupational areas and a hiring rate equivalent to the Standard Metropolitan Statistical Area (SMSA/COUNTY) availability rate, hiring and staffing rate for women and a staffing rate for ethnic minorities equivalent to the availability rate, and overall staffing rate for persons with disabilities equivalent to the general availability rate. The availability rates used are those as provided by the Chancellor's Office.

The success rates used are those related to the goals established by the Legislature in Education Code Section 87107.

Section 53032 Point Factors

This section indicates the point-factor system used to determine sub-allocations of funds. Point factors are used to moderate the swings in allocations possible if raw percentages were used. The districts receives points based on the proportion of the goal met.

53033 Failure to Report

This section provides that districts which fail to submit a Staff Data Report (or a designated successor report) are ineligible to receive funds for that portion of the allocation calculated by using data from the report.

53034 Required Report

This section requires districts to report on the use of the Faculty and Staff Diversity funds each year. In addition, until the staff data report system has integrated an element for identifying employees with disabilities, a separate survey will be reported to the Chancellor's Office. This survey will be required once the availability data for person with disabilities has been established.

53034 Visitor Parking for Persons with Disabilities

This section requires each district to provide visitor parking at each of its colleges or centers for persons with disabilities at no charge. This section defines "persons with disabilities" as those who qualify as disabled persons pursuant to Section 22511.5 of the Vehicle Code or (if students) those that would be entitled to special parking provided to students pursuant to Subchapter 1 (commencing with Section 56000 of Chapter 7 of this Division.)

This section also requires districts to post notice that such parking is available without charge. It requires accommodations for persons with disabilities if the parking is located behind a mechanical gate and the person is unable to operate the gate controls.

Finally, it requires parking fees collected pursuant to Education Code Section 72247 to be used to offset any costs resulting from compliance with the requirements of this section.

59307 Sexual Harassment and Sex Discrimination

This section requires that district ensure that all persons, regardless of their sex, are afforded equal rights and opportunities in programs and activities conducted by colleges in the district. It requires that complaints alleging discrimination on the basis of sex, including claims of sexual harassment, under the Sex Equity in Education Act, are to be filed and processed pursuant to the procedures set forth in this subchapter.

Section 59324 Responsible District Officer

This section requires each district to designate a single individual who will be responsible for receiving and coordinating the investigation of discrimination complaints. The district may allow other individuals to accept complaints and forward them to the designated compliance officer, and if the district elects to do this, complaints will be deemed to be filed when delivered to any such individual. Likewise, the actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. But, in any event, there must be one person who is ultimately responsible for overall coordination and processing of all complaints.

Section 59328 Complaint

This section sets forth the requirements for filing a discrimination complaint. The only significant change in this section is that complaints may now be accepted within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

It should be noted that this complaint procedure is separate from, and in addition to, any other remedies which may be available under other nondiscrimination statutes, district student or personnel grievance procedures, or a collective bargaining agreement. Accordingly, these procedures need not be exhausted before other administrative or judicial remedies can be pursued. On the other hand, a district may consolidate its internal grievance procedures with the complaint process set forth in these regulations. Where contractual personnel grievance procedures are involved, consolidated with the complaint process, the grievance procedures would be subject to collective bargaining.

59334 District Investigation

This section requires a district to have an impartial fact-finding investigation of a properly filed complaint. It also requires the district to file a written report with the Chancellor's office. In the report the district is required to include:

1. a description of the circumstances
2. witness testimony summary
3. relevant data analysis and evidence collected
4. a specific finding as to whether discrimination did or did not occur
5. any other information deemed appropriate by the district

Section 59336 Administrative Determination

This section requires the district to complete the investigation within ninety (90) days of receiving the complaint and forward to the complainant:

1. a summary of the investigative report
2. a written notice of the determination, description of actions to prevent similar problems in the future, proposed resolution of the complaint, and the complainant right to appeal.

Section 59338 Final District Decision: Appeals

This section clarifies that complainants may, within 15 days after receiving the district's administrative decision, request a review by the district governing board. The governing board, or a subcommittee thereof, must review the written record, but it may, in its discretion, decide whether or not to hold a hearing. The governing board is to issue its decision within 45 days after the appeal is filed, but if it does not act, the decision of the district administration is deemed final.

In the case of student complaints, the complainant has the right to file a written appeal with the State Chancellor within 30 days after the governing board issues the final district decision or permits the administrative determination to become final. In employment discrimination cases, the complainant can, at any time, file a complaint with the Department of Fair Employment and Housing, or may file an appeal with the Chancellor, but the Chancellor has the discretion to accept or reject these appeals. The Chancellor's Office will not normally intervene in employment discrimination cases unless significant policy issues are raised, there is reason to believe a pattern or practice of discrimination exists, or it is likely that an informal resolution can be achieved.

It is important to note that it is the complainant who has appeal rights under this regulation. Persons accused of discriminating (such as those accused of sexual harassment) do not have appeal rights under this regulation. However, if the district's investigation reveals that a particular person has acted improperly, the district should take steps to ensure that the problem will not recur. If the action by the district involves taking disciplinary action, then the accused person may have procedural rights under the student or employee grievance procedure.

59340 Forward to Chancellor

This section states the districts obligation to forward the original complaint, the investigative report, a copy of the notice sent to the complainant, and a copy of the final district decision in 150 days of receiving a complaint to the State Chancellor.

59342 Extensions: Fail to Comply

This section authorizes districts to apply for an extension to file the report required in Section 59340. It requires that a copy of the extension request be sent to the complainant.

Regulations for Faculty and Staff Diversity and Handling of Discrimination Complaints

Overview

This document sets forth new regulations related to faculty and staff diversity and handling discrimination complaints which were adopted by the Board of Governors at its meeting of January 9, 1992.

51010. Affirmative Action.
The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002 of this Division;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003 of this Division;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004 of this Division;

(d) ensure that a program of recruitment is carried out as required by Section 53021 of this Division;

(e) ensure that screening and selection procedures are developed and utilized in accordance with Section 53024 of this Division;

(f) ensure that the pattern of hiring decisions, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(g) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) of this Division.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code.

53000. Scope and intent.

(a) This Subchapter implements and should be read in conjunction with Education Code Sections 87100 et seq.

(b) The regulations in this Subchapter require affirmative steps to promote faculty and staff diversity which are in addition to the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations

or approval of the district's faculty and staff diversity plan pursuant to Section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district affirmative action or nondiscrimination policies.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

53001. Definitions.

As used in this Subchapter:

(a) Affirmative Action Employment Programs. "Affirmative action employment programs" means all the various methods by which equal employment opportunity and proportionate representation is to be achieved for qualified members of historically underrepresented groups.

(b) Faculty and Staff Diversity Plan. A "faculty and staff diversity plan" is a written document in which a district's work force is analyzed and specific result-oriented plans and procedures for achieving equal employment opportunity and proportionate representation of qualified members of historically underrepresented groups are set forth.

(c) Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of Section 53021 because compliance with that section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

(d) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district.

(e) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, and Hispanics. A person shall be included in the group with which he or she identifies as his or her group, but may be counted in only one ethnic group. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.

(f) Goals and Timetables. "Goals and timetables" means projected new levels of employment of historically underrepresented groups to be worked toward on a specific schedule, given the expected turnover in the work force and the availability of persons who are qualified to perform a particular job through appropriate training or experience or who will become so qualified within a reasonable length of time. Goals are not "quotas" or rigid proportions.

(g) Person with a Disability. "Person with a disability" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A person with a disability is "substantially

limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of such an impairment.

(h) Historically Underrepresented Group. "Historically underrepresented group" means any group for which the percentage of persons from that group in the applicable work force is now, and has historically been, significantly lower than the percentage that members of that group represent in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question. The Board of Governors has determined that, on a statewide basis, ethnic minorities, women, and persons with disabilities are historically underrepresented groups.

(i) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the employer to remove artificial or real barriers, which prevent or limit the employment and upward mobility of persons with disabilities.

(j) Proportionate Representation. "Proportionate representation" means that the percentage of persons from an historically underrepresented group in the applicable work force is at least equal to the percentage that members of that group represent in the pool of persons who are determined by the Chancellor to be available and qualified to perform the work in question.

(k) In-house or Promotional Only Hiring. "In-house" or "promotional only" hiring means that only existing district employees are allowed to apply for a position.

(l) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

(m) Adverse or Disparate Impact. "Adverse impact" or "disparate impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure, and demonstrates a disproportionate negative impact on a historically underrepresented group as defined in subsection(h).

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Section 87101, Education Code; Section 11092, Government Code; 29 C.F.R. 1602.48 (1981); 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an affirmative action employment program. This statement may also incorporate the nondiscrimination policy statement required pursuant to Section 59304 of this Division and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a districtwide written faculty and staff diversity plan to implement its affirmative action employment program. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) This plan shall include the goals and timetables for hiring and promotion of members of historically underrepresented groups for each college in the district and for the district as a whole. These goals and timetables shall be revised every three years and submitted to the Chancellor's Office for approval. When the district achieves proportionate representation for any historically underrepresented group in one or more of the categories specified in Section 53004(a), it shall so indicate when it next revises its goals and timetables. Thereafter, goals and timetables shall not be required for such a group in that job category or categories, unless underrepresentation subsequently recurs. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In addition, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this Subchapter pursuant to Section 53020;

(2) the procedure for filing complaints pursuant to Section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under Section 53002;

(4) a process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of this Subchapter and of state and federal non-discrimination laws.

(5) a process for providing annual written notice to appropriate community organizations concerning the district's plan and the need for assistance from the community in identifying qualified members of historically underrepresented groups for openings with the district;

(6) an analysis of the number of persons from historically underrepresented groups who are employed in the district's workforce and those who have applied for employment in each of the job categories listed in Section 53004(a);

(7) an analysis of the degree to which women, ethnic minorities, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups who the Chancellor determines to be available and qualified to perform the work required for each such job category; and

(8) a plan of corrective action, including goals and timetables for hiring and promotion, which is necessary to remedy any underrepresentation identified in the

plan by achieving proportionate representation for all historically underrepresented groups in all job classifications.

(d) The plans submitted to the Chancellor shall be public records.

(e) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this Section.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually survey its employees and shall monitor applicants for employment on an ongoing basis in order to evaluate its progress in reaching the goals set forth in its faculty and staff diversity plan. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey of employees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

(1) executive/administrative/managerial;
(2) faculty and other instructional staff;
(3) professional nonfaculty;
(4) secretarial/clerical;
(5) technical and paraprofessional;
(6) skilled crafts; and
(7) service and maintenance.

(b) For purposes of the report to the Chancellor, Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in the goal-setting process, separate employment goals are not needed for these subgroups.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; Section 8310.5, Government Code.

53005. Advisory Committee.

Each community college district shall establish a Faculty and Staff Diversity Advisory Committee to assist the district in developing and implementing the plan required under Section 53003. This advisory committee shall include members of all historically underrepresented groups whenever possible.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

Article 2. Other Specific Responsibilities of Community College Districts

53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this Subchapter at all levels of district and college operation and for making measurable progress toward the goals established in the district's faculty and staff diversity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an affirmative action officer is designated to oversee the day to day implementation of the requirements set forth in this Subchapter.

(b) The administrative structure created by any delegation of authority to the affirmative action officer or others shall be described in the district's faculty and staff diversity plan submitted pursuant to Section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this Subchapter. The plan shall also designate a single officer, who may be the affirmative action officer, who shall be given authority and responsibility for receiving complaints filed pursuant to Section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by Sections 53023 and 53024.

(c) any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this Subchapter.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

53021. Recruitment.

(a) Community college districts shall undertake a program of verifiable affirmative action recruitment of qualified members of historically underrepresented groups in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions.

(b) "In house or promotional only" recruitment shall not be used to fill any new opening except when:

(1) the pool of eligible district employees has achieved proportionate representation and the district has an upward mobility program which is included in the faculty and staff diversity plan approved by the Chancellor;

(2) the position is being filled on an interim basis (not to exceed one year) to allow for full and open recruitment; or

(3) justified by "business necessity" as defined in Section 53001(c).

(c) If a district believes justification exists for use of the "business necessity" exception, it shall so notify the Faculty and Staff Diversity Advisory Committee established pursuant to Section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.

(d) Even where in-house or promotional only recruitment is permitted pursuant to subsection (b), all qualified district employees shall be afforded the opportunity to apply.

(e) For purposes of this section, a new opening is not created when:

(1) there is a reorganization or series of transfers that does not result in a net increase in the number of employees;

(2) a position which is currently occupied by an incumbent and is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(3) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term; or

(4) the position is filled by a temporary appointment using recruitment procedures authorized by other provisions of law.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

53022. Job Announcements and Required Qualifications.

Job announcements shall state clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance. For faculty and administrative positions, job requirements shall include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. Job specifications, including any "desired" or "required" qualifications beyond the state minimum qualifications (set forth in Subchapter 4, commencing with Section 53400 of this Chapter) which the district wishes to utilize, shall be reviewed before the position is announced, to ensure conformity with the requirements of this Subchapter and state and federal nondiscrimination laws.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

53023. Applicant Pool.

(a) All applicants shall be given an opportunity to identify themselves as being a member of a historically underrepresented group when their application is submitted. This information shall be kept confidential and shall be used only in research, validation, monitoring, evaluating the effectiveness of the district's affirmative action employment program, or any other purpose specifically authorized in this Subchapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement. Before the selection process begins, the composition of the qualified applicant pool shall be analyzed to ensure that the goals established in the district's faculty and staff diversity plan may be furthered and that members of historically

underrepresented groups are not adversely impacted. If this is not the case, the chief executive officer or his or her designee shall take effective steps to address the adverse impact before the selection process is begun. Such steps may include, but are not limited to:

(1) the deadline is extended and additional recruitment focused on historically underrepresented groups is undertaken;

(2) applicants from historically underrepresented groups who were initially screened out because they failed to meet locally established "desirable or preferred" qualifications beyond state minimum qualifications are included in the applicant pool where such applicants may be expected to meet these additional qualifications through appropriate training or experience within a reasonable length of time.

(3) locally established qualifications beyond state minimum qualifications are modified or removed and the application deadline is extended.

(c) If adverse impact persists after taking steps required under subdivision (b), the selection process may proceed only if:

(1) the job announcement does not require qualifications beyond the statewide minimum qualifications;

(2) locally established qualifications beyond state minimum qualifications, if any, are shown to be job related and consistent with business necessity through a process meeting the requirements of federal law; or

(3) the particular requirements beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; 42 U.S.C. 2000 e-2.

53024. Screening or Selection Procedures.

(a) All screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, consideration is given to the extent to which applicants have a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students;

(3) based solely on job-related criteria, provided that, when a particular candidate who meets the minimum qualifications for the job is also a member of an historically underrepresented group, this membership may be taken into account as one factor in the final selection process where this would further achievement of the goals set forth in the district's faculty and staff diversity plan; and

(4) designed and monitored to ensure that they do not have an adverse impact on members of historically underrepresented groups.

(b) If monitoring pursuant to subsection (a)(3) reveals that any selection technique or procedure has adversely impacted any historically underrepresented group,

the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The affirmative action officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. Where necessary, the position may be re-opened at any time and a new selection process initiated in a way designed to avoid adverse impact.

(c) A district may not designate or set aside particular positions to be filled by members of any group defined in terms of race, ethnicity, gender, age, disability, or any other characteristic which would result in discriminatory treatment prohibited by state or federal law. Nor may a district apply goals set forth in the district's faculty and staff diversity plan in a rigid manner which has the purpose or effect of so discriminating.

(d) Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of Section 53022.

(e) Selection testing for employees shall follow procedures as outlined in Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

(f) Selection committees shall include members of historically underrepresented groups whenever possible.

(g) Notwithstanding any other provision of this Division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and order further review by the screening committee or reopening of the position where necessary to further achievement of the goals established in the faculty and staff diversity plan. However, consistent failure to select qualified candidates from historically underrepresented groups who are recommended by screening committees shall constitute a violation of Section 51010 of this Division.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code.

53025. Persons with Disabilities.

(a) By July 1, 1992, each community college district shall establish goals and timetables for hiring and promotion of persons with disabilities, provided that data on the availability of persons with disabilities who are qualified for employment by community colleges is furnished by the Chancellor.

(b) For academic year 1992-93, and each year thereafter, districts shall monitor for adverse impact on persons with disabilities consistent with the requirements of Sections 53004, 53023, and 53024 and shall report on the numbers of persons with disabilities who are employed by the district pursuant to Section 53004.

(c) Community college districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code Sections 11135 et seq., and Section 504 of the Rehabilitation Act of 1973. Such accommodations may include, but are not limited to, job site modifications, job restructuring, flexible scheduling, adaptive equipment, and auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with faculty and staff diversity funds provided pursuant to Article 3 (commencing with Section 53030) of this Subchapter.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., Education Code; Sections 11135 et seq., Government Code; 29 U.S.C. 794.

53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this Subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code Sections 11135 et seq. shall be processed according to the procedures set forth in Subchapter 4 (commencing with Section 59300) of Chapter 10 of this Division.

NOTE: Authority cited: Sections 70901 and 87105, Education Code; Sections 11135 et seq., Government Code. Reference: Sections 87100 et seq., Education Code.

53027. Applicability to Districts Operating on the Merit System.

Nothing in this Subchapter shall be construed to conflict with or be inconsistent with the provisions of Article 3 (commencing with Section 88060) of Chapter 4 of Part 51 of the Education Code which apply to districts operating a merit system for classified employees.

NOTE: Authority cited: Sections 70901 and 87105, Education Code. Reference: Sections 87100 et seq., and 88060 et seq., Education Code.

Article 3. Faculty and Staff Diversity Fund

53030. Fund Allocation.

Prior to the end of the fiscal year preceding the year of allocation, the Chancellor shall recommend to the Board of Governors an allocation formula for distribution of the Faculty and Staff Diversity Fund established pursuant to Education Code Section 87107. The allocation shall be consistent with the following:

(a) A portion of the fund, but not more than 25 percent, shall be set aside for the purposes of Education Code Section 87107(c), provided that:

(1) sufficient funds to provide technical assistance, service, monitoring, and compliance functions shall be designated from these monies; and

(2) the remainder of these funds shall be distributed on the basis of the average daily attendance or full-time equivalent students of each district as a proportion of the total average daily attendance or full-time equivalent students for all districts. These funds are to be used to reimburse costs as specified in Education Code Section 87107.

(b) That portion of the funds not allocated pursuant to subsection (a) may be allocated to the districts in the following five categories:

(1) an amount proportional to the average daily attendance or full-time equivalent students of each district to the total average daily attendance or full-time equivalent students for all districts;

(2) an equal dollar amount to each district;

(3) an amount related to success in employing ethnic minorities in EEO6 categories 1 through 3 (professional positions);

(4) an amount related to success in employing ethnic minorities in EEO6 categories 4 through 7 (non-professional positions); and

(5) an amount related to past success in employing ethnic minorities, women and, persons with disabilities, as evidenced by the proportion of ethnic minority and women staff in each of the EEO6 categories and for the proportion of persons with disabilities in the general staff.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

53031. Success.

For the purpose of this Subchapter, "success" is defined as:

(a) for ethnic minorities, a hiring rate of 30 percent (30%) in each of the professional occupational areas and a hiring rate equivalent to the Standard Metropolitan Statistical Area (SMSA)/COUNTY availability rate, as provided by the Chancellor's Office, in each of the non-professional occupational areas;

(b) a hiring and staffing rate for women and a staffing rate for ethnic minorities equivalent to the availability rate, as provided by the Chancellor's Office; and

(c) an overall staffing rate for persons with disabilities equivalent to the general availability rate, as provided by the Chancellor's Office.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

53032. Point Factors.

(a) In determining the sub-allocations for Section 53030(b)(3), (4), and (5), a point-factor system shall be used. A district will receive points as shown below for: (1) each of the above sections dealing with ethnic minorities and women in each EEO6 category, based on the latest annual survey required under Section 53004 of this Subchapter; and (2) the total hiring reported in the Section 53004 survey, or in a special survey of persons with disabilities, if necessary.

Degree of Success	Proportion of Goal Met	Points
None	0.00%	0
Low	0.01-33.32%	1
Moderate	33.33-66.66%	2
High	66.67-99.99%	3
Successful	100.00%	4

(b) For each district, a statistical quantity will be calculated for each EEO6 category, or on the total staffing in the case of persons with disabilities, based on the ratio of points awarded to the district, divided by the total points awarded to all districts. The sum of a district's category calculations, divided by the number of categories in which hiring/staffing took place, shall determine the share of the sub-allocation provided the district.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

53033. Failure to Report.

Any district failing to provide the data required under Section 53004 is not in compliance with this Subchapter. Faculty and Staff Diversity funds for any given fiscal year, other than those under Section 53030(a) and (b)(1) and (2), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

53034. Required Report.

Districts shall submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under Section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

NOTE: Authority cited: Sections 70901 and 87107, Education Code. Reference: Section 87107, Education Code.

59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code Sections 66260 and 67311.5, provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or those providing transportation for such persons.

(b) For purposes of this section, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to Section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to Subchapter 1 (commencing with Section 56000) of Chapter 7 of this Division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code Section 72247 shall be used to offset any costs resulting from compliance with the requirements of this section.

NOTE: Authority cited: Sections 66260, 67311.5 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 66260, 67311.5, and 72247, Education Code; and Section 22511.5, Vehicle Code.

59307. Sexual Harassment and Sex Discrimination.

The governing board of each community college district shall ensure that all persons, regardless of their sex, are afforded equal rights and opportunities in programs and activities conducted by colleges in the district. The district shall comply with all requirements of Chapter 2 (commencing with Section 200) of Division 1 of Title 1 of the Education Code, which is commonly referred to as the Sex Equity in Education Act. Complaints alleging sexual harassment or discrimination on the basis of gender prohibited by that Act shall be filed and investigated pursuant to the procedures set forth in this subchapter.

NOTE: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 200 et seq., Education Code.

59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to Section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, and 11138, Government Code.

59328. Complaint.

(a) An investigation of alleged unlawful discrimination prohibited by this Subchapter will be initiated by filing a complaint which meets the following requirements.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity.

(2) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to Section 59324 by ~~of~~ the appropriate community college district.

(3) The complaint shall be in a form prescribed by the Chancellor.

(4) The complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

(b) Districts shall establish procedures for attempting to resolve charges of unlawful discrimination which shall be a prerequisite to filing a complaint pursuant to this chapter. Such procedures shall be limited to thirty (30) days.

NOTE: Authority cited: Section 11138, Government Code, and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59334. District Investigation.

Upon receiving a complaint which is properly filed in accordance with Section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results

of the investigation shall be set forth in a written report which shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint;

(c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint; and

(e) any other information deemed appropriate by the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference. Sections 11135, 11136, and 11138, Government Code.

59336. Administrative Determination

Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward all of the following to the complainant:

(a) a copy or summary of the investigative report required pursuant to Section 59334,

(b) a written notice setting forth:

(1) the determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint

(2) a description of actions taken, if any, to prevent similar problems from occurring in the future;

(3) the proposed resolution of the complaint, and

(4) the complainant's right to appeal to the district governing board and the Chancellor pursuant to Section 59338.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59338. Final District Decision; Appeals.

(a) If the complainant is not satisfied with the results of the administrative determination pursuant to Section 59336, the complainant may, within fifteen (15) days, submit a written appeal to the district governing board. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal. A copy of the final district decision rendered by the governing board shall be forwarded to the complainant and to the Chancellor. The complainant shall also be notified of his or her right to appeal this decision pursuant to this section. If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter.

(b) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final pursuant to subsection (a). Such appeals shall be processed pursuant to the provisions of Article 4 (commencing with Section 59350) of this subchapter.

(c) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing. In addition, in such cases, the complainant may file a petition for review with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final pursuant to subsection (a). The Chancellor shall have discretion to accept or reject any such petition for review in employment discrimination cases. If the Chancellor agrees to accept the case, he/she may:

(1) attempt to informally resolve the matter pursuant to Section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of Subchapter 1 (commencing with Section 53000) of Chapter 4 of this Division; or

(3) take any other action deemed appropriate by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59340. Forward to Chancellor.

Within 150-days of receiving a complaint, the district will forward the following to the Chancellor:

(a) the original complaint;

(b) the report required pursuant to Section 59334 describing of the nature and extent of the investigation conducted by the district;

(c) a copy of the notice sent to the complainant pursuant to Section 59336(b);

(d) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to Section 59338(a);

(e) a copy of the notice to the complainant required pursuant to Section 59338(a); and

(f) such other information as the Chancellor may require.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

59342. Extensions; Failure to Comply.

(a) If a district, for reasons beyond its control, is unable to comply with the 150-day deadline specified in Section 59340 for submission of materials to the Chan-

cellor, the district may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to Section 59340 and shall set the reasons for the request and the date by which the district expects to be able to submit the required materials.

(b) A copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

(c) The Chancellor may grant the request unless delay would be prejudicial to the complainant.

(d) If a district fails to comply with the requirements of Section 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in Article 4 (commencing with Section 59350) of the Subchapter based on the original complaint and any other relevant information then available.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.